UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,461	11/21/2003	Kjell-Tore Smith	115700	8061

29078 7590 11/15/2006

CHRISTIAN D. ABEL
ONSAGERS AS
POSTBOKS 6963 ST. OLAVS PLASS
NORWAY, N-0130
NORWAY

EXAMINER	
GELLNER, JEFFREY L	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/717,461	SMITH ET AL.	
	Examiner	Art Unit	
	Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 September 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Declaration under 37 CFR 1.131 from Smith et al.

The Declaration filed on under 37 CFR 1.131 has been considered but is ineffective to overcome the Hoffmann et al. reference.

The Declaration is improper because there is no statement in the declaration where declarants warn that wilful false statements and the like are punishable by fine or imprisonment, or both, and may jeopardize the validity of the application or any patent issuing thereon (see 37 CFR 1.68 and MPEP 715.04 II).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-~~26~~ 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hofmann et al.(US 6,884,307 B1) in view of Lavertu et al. (US 4,065,529).

As to claims 1, 2, 4, 6, 18-20, Hofmann et al. discloses a composition of an explosive with a poly acrylic elastomer , Hy Temp (col. 4, example 1), and a plasticizer, DOA (col. 4, example 1), a portion of the explosive with fine crystals in the range of 2 to 30μm, 12 to 18μm, or 5-20 μm ("15 μm" at col. 4, example 1). Not disclosed is the explosive being RDX, Type I, or RDX Type I and HMX and course crystals having a size of 50 to 250μm, 60 to 90μm, or 60-

170μm. Hofmann et al., itself, discloses the use of RDX (col. 3 lines 19-24; and RDX is known to have contain HMX as an impurity) and Lavertu et al. discloses the use of RDX crystals having a size of from 50 to 250 μm, 60 to 90 μm, or 60-170 μm (col. 3, table I). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the composition of Hofmann et al. by using RDX as disclosed by Hofmann et al. and RDX type I depending upon use and having the crystals with a size of from 50 to 250μm as disclosed by Lavertu et al. so as to achieve better packing (see Lavertu et al. at col. 1 lines 31-40).

As to claims 3, 5, 17, 21, and 22, the limitations of claims 1, 2, 3, and 5 are disclosed as described above. Not disclosed is the explosive being 91 to 93% or 44 to 56 % or 35 to 65% weight of the composition. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the composition of Hofmann et al. as modified by Lavertu et al. by having the explosive from 91 to 93% or 44 to 56% weight depending upon the results need to be achieved.

As to claims 7, 23, and 24, the limitations of claim 2 are disclosed as described above. Not disclosed is the HMX being 9 to 11% or 5 to 15% weight of the composition. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the composition of Hofmann et al. as modified by Lavertu et al. by having the HMX from 9 to 11% weight depending upon the results need to be achieved.

As to claims 8, 25, and 26, Hofmann et al. as modified by Lavertu et al. further disclose HMX crystals at a size of 8 to 14 μm or 5 to 20 μm (see Hofmann et al. at col. 4, example 1).

As to claims 9-16 and 27-35, Hofmann et al. as modified by Lavertu et al. disclose the explosive composition as described above. Additionally, MPEP 2113 Product-by-Process claims state that "[i]f the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process." Here, the explosive composition made in water-slurry process is obvious in light of Hofmann et al. as modified by Lavertu et al. (as stated in the other rejections in the instant office action) since the explosive composition is not a patentable distinction.

Response to Arguments

Applicant's arguments filed 6 September 2006 have been fully considered but they are not persuasive. Applicants' argument is that Declarants' declaration swears behind the Hoffmann et al. reference. This declaration, however, is improper for the reason stated above and hence does not overcome the Hoffmann et al. reference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

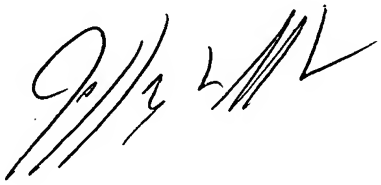
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jeffrey L. Gellner
Primary Examiner
Art Unit 3643